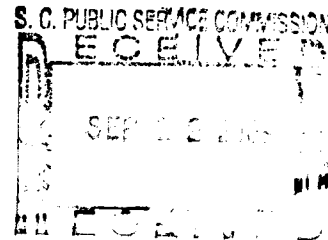


219252



September 21, 2009

The Honorable Charles Terreni, Chief Clerk/Administrator
Randall Dong, Hearing Examiner
Public Service Commission of South Carolina
101 Executive Center Drive (29210)
P.O. Drawer 11649
Columbia, SC 29211

Re: Response to SCE&G's Motion to Dismiss
Michelle and James Smith
Docket No. 2009-327-E

Dear Mr. Terreni and Mr. Dong:

Please accept this letter as a partial response to South Carolina Electric & Gas Company's (SCE&G) Motion to Dismiss in Docket No. 2009-327-E. Information that only SCE&G has (e.g., economic/cost analysis of the 13 routes considered for the high voltage transmission lines installed) is not in hand and may affect this response.

We have mailed a copy of this response to counsel for SCE&G and as well as to counsel for the South Carolina Office of Regulatory Staff.

Please call if you have questions.

Sincerely,

Michelle and James Smith

Michelle and James Smith
35 Rainbow Road
Bluffton, SC 29910
804-539-9642

Enclosures

cc: Shannon Bowyer Hudson
Chad Burgess
(via first-class mail and email with enclosure)

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2009-327-E

| | | |
|---------------------------------------|---|---------------------------|
| IN RE: |) | |
| |) | REPLY TO |
| Michelle and James Smith, |) | |
| Complainants/Petitioners |) | SCE&G'S MOTION TO DISMISS |
| v. |) | |
| South Carolina Electric & Gas Company |) | |
| |) | |
| Defendant/Respondant |) | |

Michelle and James Smith ("The Smiths") hereby reply to SCE&G's Dismissal Argument

INTRODUCTION

SCE&G argues its motion to dismiss based upon:

1. Lack of jurisdiction
2. Lack of standing
 - because the Smiths are not a customer of SCE&G
 - because the Smiths do not have a 115 kV line on their property

SCE&G's Motion to Dismiss based on lack of jurisdiction should fail for the following reasons:

1. The Public Service Commission ("PSC" or "Commission") does have jurisdiction. According to SC Code of Laws SECTION 58 27 40, "Each electrical utility . . . must obey and comply with all requirements of every order, decision, direction, rule, or regulation made or prescribed by the Public Service Commission or every direction, rule, or regulation made or prescribed by the Office of Regulatory Staff pursuant to this chapter or in relation to any other matter relating to or affecting the business of the electrical utility, . . .and must do everything necessary or proper to comply with and observe every order, decision, direction, rule, or regulation by all of its officers, agents, and employees." As described below, SCE&G did not "obey and comply with all requirements."
2. According to SECTION 58 27 140, upon petition, the Commission has the power to:
 - (1) ascertain and fix just and reasonable standards, classifications, regulations, practices, or service to be furnished, imposed, observed, and followed by any or all electrical utilities;
 - (2) ascertain and fix by regulation adequate and reasonable standards for the measurement of quality, quantity, initial voltage, or other condition pertaining to the supply of the product, commodity, or service furnished or rendered by any or all electrical utilities;
 - (3) prescribe reasonable regulations for the examination and testing of such product, commodity, or service and for the measurement thereof; and

- (4) establish or approve reasonable rules, regulations, specifications, and standards to secure the accuracy of all meters and appliances for measurement.

As Petitioners, the Smiths are asking for the Commission to use powers outlined in SECTION 58 27 140 and in SECTION 58 27 150, which states, “the Commission may make such rules and regulations not inconsistent with law as may be proper in the exercise of its powers or for the performance of its duties under this chapter, all of which shall have the force of law.”

3. SCE&G failed to comply with the PSC regulation requiring proper notification of local governments as required in S.C. Code SECTION. 6 29 540: “These [exempt] utilities must submit construction information to the appropriate local planning commission.” A small portion of the high voltage lines are in the jurisdiction of The Town of Bluffton. The major portion of the lines is in Beaufort County. The Beaufort County Administrator’s Office denies receiving notice of the project. The Beaufort County Engineering and Planning Departments deny having received construction information as required. Further, local Congressman Bill Herbkersman said he did not recall receiving notification of the project and would have objected to the above ground transmission lines if he had. The HVTLS were installed in the district of County Council Representative Weston Newton. He too said he did not recall receiving notification of the project.

SCE&G’s lack of communication with the local government is of relevance because Beaufort County missed an opportunity to work out a franchise fee agreement to pay for the burial of the lines. Bluffton borders Hilton Head Island, where nearly all electrical lines are underground for aesthetics and practical reasons (e.g., tropical storms). A three percent franchise fee pays for the lines to be underground.

SC local governments have the duty of protecting the environment and of planning and land use. Lack of notice interfered with the following tasks of Beaufort County planners: SECTION 6-29-510 (E) “All planning elements must be an expression of the planning commission recommendations to the appropriate governing bodies with regard to the wise and efficient use of public funds, the future growth, development, and redevelopment of its area of jurisdiction, and consideration of the fiscal impact on property owners.”

Futher, SC local governments have rights granted by the SC Constitution, as described in SECTION 58 27 90. Effect of chapter on constitutional rights and powers of municipalities:

Nothing contained in this chapter or in Title 33, Chapter 49 shall be construed as to modify, abridge, or impair any of the rights or powers granted to cities and towns under the provisions of Article VIII, Sections 15 and 16, or any other provisions of the Constitution of this State, and every right, power, or privilege conferred upon any city or town by the Constitution of this State otherwise appearing to be modified, abridged, or impaired by any provision of this chapter is to be deemed excepted from the operation thereof, it being the intention of this chapter to control and regulate the acts of cities and towns only to an extent consistent with the Constitution of this State.

4. While SCE&G claims that the permitting process began 12 years ago, the permit issued by the SC Department of Transportation was issued in June 2007. Even though the permit was extended, SCE&G installed the 115 V line under an expired SC DOT permit (see attached). Permit 47753 was to become “null and void unless the work contemplated . . . shall have been completed prior to July 10, 2009.”
5. SCE&G used bullying tactics with certain property owners to obtain rights to their land. One property owner said she and her husband were offered \$900 in exchange for the right-of-way for a tower in their front yard. An SCE&G official told the homeowners that SCE&G had more money

for attorneys than they did, and if they did not submit, their property would be condemned. Some property owners were made to feel helpless and therefore submitted to agreeing with SCE&G regarding the paltry compensation for their property. SCE&G required property owners who received compensation to sign a “hush clause.” Several of these property owners have initiated legal action against SCE&G regarding the condemnation of their property. What weakens the value of a significant number of homes in a community affects all homeowners in a community. The Smiths petition the Commission according to SECTION 58 27 140, to review SCE&G’s tactics to: “ascertain and fix just and reasonable standards, classifications, regulations, practices, or service to be furnished, imposed, observed, and followed by any or all electrical utilities.”

6. The Smiths petition the Commission according to SECTION 58 27 140, to review SCE&G’s tactics to: “ascertain and fix just and reasonable standards, classifications, regulations, practices, or service to be furnished, imposed, observed, and followed by any or all electrical utilities” regarding SCE&G’s zig-zag pattern for the installation of the lines. SCE&G diverted the HVTLS from wealthier neighborhoods, and selected the route of a lower income neighborhood serviced by another utility. The HVTLS then go on to serve primarily higher income residents in the neighborhoods of Palmetto Bluff and Daufuskie Island, communities where all utilities are underground.
7. SCE&G (SCANA Corporation) is a privately-owned, for-profit company. The less money it takes to install a transmission line, the more SCANA benefits and more specifically, SCANA executives benefit. According to Forbes.com, SCANA CEO William Timmerman’s annual compensation in the past five years has been \$13.53 million. Beaufort County property owners should not have to suffer unreimbursed property devaluation so that corporate profits can remain high.
8. SCE&G extended these high voltage lines through a neighborhood where residents receive similar service from another utility, Palmetto Electric Cooperative. Unlike SCE&G, Palmetto Electric, as a co-op, does not condemn land for right of ways. SCE&G may not have adhered to SECTION 58-27-1230 which states, “Certificate of public convenience and necessity shall be obtained prior to construction, operation or extension of system; exceptions.[SC ST SECTION 58-27-1230]”

“No electrical utility . . . shall hereafter begin the construction or operation of any electrical utility plant or system or of any extension thereof, except those ordered by the Commission under the provisions of § 58-27-1210, without first obtaining from the Commission a certificate that public convenience and necessity require or will require such construction or operation. But unless such construction or operation has been commenced under a limited or conditional certificate of authority as provided by § 58-27-1260, this section shall not be construed to require any such electrical utility to secure a certificate (a) for any extension within any municipality or district within which it had lawfully commenced operations prior to April 8, 1932, (b) for an extension within or to territory already served by it, necessary in the ordinary course of its business or (c) for an extension into territory contiguous to that already occupied by it and not receiving similar service from another electrical utility. No electrical utility, except a municipality within its corporate limits, shall exercise any right or privilege under any franchise or permit, the exercise of which has been suspended or discontinued for more than one year, without first obtaining from the Commission a certificate that public convenience and necessity require the exercise of such right or privilege.”

SCE&G argues that the Smiths lack standing to bring a complaint to the PSC. This argument has no merit:

1. Refer to the attached affidavit of Michelle Smith, who lives in the Huggins Lake community adversely affected by the installation of the high voltage transmission lines. The facts set forth in the affidavit fully establish that the Smiths meet both the grounds for intervention set forth in Administrative Law Court Rule 20(B), as well as the standard for standing in environmental cases established over the past 30 years. See *Smiley v. S.C. Department of Health and Environmental Control*. See also: *Friends of the Earth v. Laidlaw Environmental Services (TOC), Inc.* 528 U.S. 167, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000); *Sierra Club v. Morton*, 405 U.S. 727, 92 S.Ct. 1361, 31 L.Ed.2d 636 (1972); *Energy Research Foundation v. Waddell*, 295 S.C. 100, 367 S.E.2d 419 (1988); *South Carolina Wildlife Federation v. South Carolina Coastal Council*, 296 S.C. 187, 371 S.E.2d 521 (1988).
2. The Smiths argue standing not as a customer of SCE&G, but as a property owner whose property, value has been harmed economically. Home sellers, real estate agents, appraisers, and lending institutions use neighboring homes as "comparables." Homes in the neighborhood that have high voltage transmission lines in their front yard will have a lower value than homes that don't. Thus, the value of the Smith's home is diminished. Many potential home buyers, including the Smiths will not even get out of their car to look at a home for sale if there is a HVTL nearby. The diminished value of the Smith's property in the marketplace and the diminished value of their property related to their enjoyment as owners is an injury particular to the Smiths, not simply common to the general public.
3. The Huggins Lake community the Smiths purchased a home in has restrictive covenants. People choose a neighborhood to live in for particular characteristics. No one sets out to find a home near high voltage lines. For this reason, a natural, unspoiled environment has value to people. The SC State Supreme Court agrees with this concept of value, as evidenced in *Smiley v. S.C. Department of Health and Environmental Control*: "Interference with Smiley's enjoyment of the beach, and his inability to use it for his rehabilitative jogging for at least six months a year for at least the next five years, are sufficient allegations of a 'stake in the outcome' to permit Smiley standing to challenge the permit." Similarly, SCE&G's installation of high voltage power lines along a scenic, residential road interferes with enjoyment of the area.
4. Thus, the Smiths show "an injury in fact--a harm suffered by the plaintiff that is concrete and actual or imminent, not conjectural or hypothetical." *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 118 S.Ct. 1003, 1016, 140 L.Ed.2d 210 (1998). The Smiths have established "causation--a fairly traceable connection between the plaintiff's injury and the complained-of conduct of the defendant." *Id.* And finally, the Smith's complaint has redressability--the requested relief, e.g., burial of the lines, "will redress the alleged injury." *Id.*

Conclusion

For the above reasons, the Smiths respectfully request that the Commission issue an order rejecting SCE&G's Motion to Dismiss.

Respectfully submitted,

Michelle and James Smith

Michelle and James Smith

Bluffton, South Carolina
September 21, 2009

**BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 20090-327-E**

IN RE:

Michelle and James Smith

Complainant/Petitioner,

AFFIDAVIT

v.

South Carolina Electric & Gas Company.

Defendant/Respondant

Personally appeared before me E. Michelle Smith, who, after having been duly sworn, deposes and states as follows:

1. My name is E. Michelle Smith and I am a resident at 35 Rainbow Road, Bluffton, SC. I have lived at this location since August 2006. I am a member of the Huggins Lake Community. My husband and I purchased our home because of its quiet, unspoiled location. One of the things I most like to do in the world is to get out and walk or bike in the neighborhood I live in, a neighborhood chosen largely for its natural surroundings. Sometimes I walk or bike alone, sometimes my husband and I enjoy walks together. The surprise installation of the high voltage transmission lines changes the character of the area and translates into decreased enjoyment and use of the neighborhood.
2. The integrity of the aesthetics upon approaching the neighborhood has been harmed by these out of place high voltage transmission line towers, which are not in keeping with the slow-paced, quiet and relaxing life that my family and I enjoy.

FURTHER AFFIANT SAYETH NOT

E. Michelle Smith

E. Michelle Smith

SWORN TO before me this
21st day of September, 2009

K Banks

Notary Public for South Carolina

My commission expires: 2/26/17





**South Carolina
Department of Transportation**

13 Munch Drive
Beaufort, South Carolina 29906
(843) 524-7255 Telephone
(843) 524-3478 Fax

January 30, 2009

Ms. Connie Beall
SCE&G
Palmetto Center (J29)
Columbia, South Carolina 29218

RE: Request for Extension of Time
Encroachment Permit Number S-07-070164

Dear Ms. Beall:

The referenced encroachment permit has expired, however, per your request I have extended the permit time for an additional five (5) months until **July 10, 2009**. It is my understanding that this project has not been completed.

If you feel additional time will be required for this project or if you have any questions please don't hesitate to contact me.

Sincerely,

Maurice D. Allen, Sr. MA, MBA
Assistant Resident Maintenance Engineer

LCS:mda
Enclosure

File: D6/BEA/ALLEN_A: Extend



**South Carolina
Department of Transportation**

13 Munch Drive
Beaufort, South Carolina 29906
(843) 524-7255 Telephone
(843) 524-3478 Fax

July 10, 2007

Ms. Connie J Beall
South Carolina Electric & Gas
Palmetto Center (60G)
Columbia, South Carolina 29218

RE: Electric Overhead 115 KV Line – Gibbet Road – Beaufort, SC
Encroachment Permit Number S-07-070164 (47753)

Dear Connie:

The approved encroachment permit for the referenced project is enclosed. Please note that I have added a special provision to the permit that placement of the utility poles will be behind the ditch line. Under no circumstances are power poles to be placed within the ditch line or between the roadway edge and the ditch. We maintain 33'/66' right-of-way along Gibbet Road according to our road plans.

Should you have questions or if I can assist you further please don't hesitate to call.

Sincerely,


Wendell M. Mulligan
Resident Maintenance Engineer

WMM:ro
Enclosures
File: D6/BEA/RO C: SCE&G
mulliganwm@scdot.org

Permit Application for Construction and Maintenance Public Service Utility Line Along State Highway

No. S-07-070144
(47753)

APPLICANT: South Carolina Electric & Gas
AND Anna J. Beall
Elizabeth Center (600)
ADDRESS: Columbia, SC 29218
TELEPHONE NUMBER: 803-211-8281

COUNTY: Beaufort County
ROAD/ROUTE: Gilbert Road
ROAD NAME: Gilbert Road

1. Pursuant to provisions of Statutes of the Code of Laws of South Carolina, 1976, the undersigned applicant hereby notifies **THE SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION (SCDOT)** of the said applicant's purpose to construct and maintain a public service utility line, as described herein, within the limits of a highway right of way, along or over the State highway or highways, described herein.
2. **Type of Public Service Line:** Pritchardville 115 to line
3. **Description of location:**

Request permit to install 30" structures 15'-30' on SCDOT right of way along Gilbert Road in Beaufort County. Location of each structure can better be seen on attached SCE&G drawings TA-09057-60201, TA-09057-60202, and TA-09057-60203.

(Attach sketch indicating roadway features such as: pavement width, shoulder width, sidewalk and curb and gutter location, significant drainage structure, north arrow, right of way width, and location of the proposed utility with respect to the roadway centerline and the nearest intersecting road on the State system.)

4. The undersigned applicant hereby requests the SCDOT to formally waive objections to construction and maintenance of the line described herein. It is expressly understood that the line, if and when constructed, shall be installed in accordance with the sketch attached hereto and made a part hereof. The applicant agrees to comply with and be bound by the Department's "A Policy for Accommodating Utilities on Highways Rights of Way" and "Standard Specifications for Highway Construction" (made a part hereof by reference) on file in the Utility Office of the Department, and all general provisions on the reverse hereof and special provisions below or attached hereto during the installation, operation and maintenance of said utility facilities within the Department Right of Way. The applicant hereby further agrees, and binds his heirs, successors, assigns, to assume any and all liability this Department might otherwise have in connection with accidents or injuries to persons, or damage to property, including the highway, that may be caused by the construction, maintenance, use, moving or removing, of the physical appurtenances contemplated herein and agrees to indemnify this Department for any liability incurred or injury or damage sustained by reason of the past, present, or future existence of said appurtenances.

APPLICANT NAME: Connie J. Beall (PLEASE PRINT OR TYPE) **DATE:** June 29, 2007
APPLICANT SIGNATURE: Connie J. Beall **TITLE:** Highway Contr.

In compliance with your request and subject to all the provisions, terms, conditions and restrictions stated in the application, general provisions on the reverse hereof, and special provisions below or attached hereto, the Department approves the request. This permit shall become null and void unless the work contemplated herein shall have been completed prior to 7/10/2008.

SPECIAL PROVISIONS: * Placement of the utility poles will be behind the ditch line. Under no circumstances are power poles to be placed within the ditch line or between the roadway edge and the ditch.

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- The ditches and/or shoulders disturbed by this installation will be reestablished to proper grade, original cross section, stabilized, and all drain pipes cleared.
- The road shoulders and ditches will be monitored after every rainfall event for erosion and slough. Drained areas will be promptly repaired and re-seeded.
- The ditches and shoulders will be grass seeded in accordance with the attached seeding schedule. ANNUAL RYE GRASS is no longer acceptable for seeding on the SCDOT right-of-way.
- The applicant is responsible for the maintenance of the disturbed area until a satisfactory state of grass has been established. Erosion has stopped and acceptance of the restoration has been documented by a letter from the SCDOT.

The cable trenches and the bore pits will have a minimum pavement edge offset of 5 feet from the ditch edge and 10 feet from the roadway edge. All other appurtenances will be placed either behind the ditch edge and 10 feet from the roadway edge or between the roadway edge and the ditch. 7-10-07
DATE RECEIVED BY RES. MAINT. ENGR. **DATE FORWARDED** 7-10-07 **SCDOT APPROVAL** 7-10-07
☐ **RESIDENT MAINTENANCE ENGINEER** ☐ **STATE HIGHWAY ENGINEER**
☐ **DISTRICT ENGINEERING ADMINISTRATOR** ☐ **DISTRICT MAINT./CONSTRUCTION ENGINEER**
DATE RECEIVED BY DIST. ENGR. ADMIN. **DATE FORWARDED** 7-10-07